AF/3673

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Practitioner's Docket No. 006348.00002 *PATENT*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Rex D. Davidson
Application No.: 10/027,460 Group No.: 3673
Filed: 12/21/2001 Examiner: Singh, Sunil
For: Floor Scraping machine for Floating Blade

Mail Stop Appeal Briefs – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION--37 C.F.R. § 1.192)

1. Transmitted herewith, in triplicate, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on August 19, 2003.

2. STATUS OF APPLICANT

This application is on behalf of a small entity. A statement was already filed.

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*

*(When using Express Mail, the Express Mail label number is **mandatory**; Express Mail certification is optional.)*

I hereby certify that, on the date shown below, this correspondence is being:

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37 C.F.R. § 1.8(a)
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Date: 10/20/03

Signature

FRANK J. CATALANO

(type or print name of person certifying)

** Only the date of filing (' 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under ' 1.8 continues to be taken into account in determining timeliness. See ' 1.703(f). Consider "Express Mail Post Office to Addressee" (' 1.10) or facsimile transmission (' 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.*

3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. § 1.17(c), the fee for filing the Appeal Brief is:

small entity	$165.00

Appeal Brief fee due $165.00

4. EXTENSION OF TERM

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee	$165.00
Extension fee (if any)	$0.00

TOTAL FEE DUE $165.00

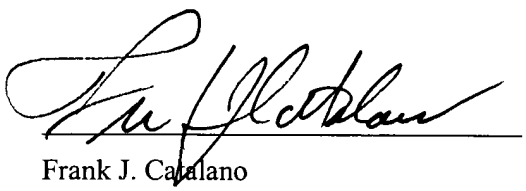
6. FEE PAYMENT

Attached is a check in the amount of $165.00.

7. FEE DEFICIENCY

If any additional extension and/or fee is required, and if any additional fee for claims is required, charge DEPOSIT ACCOUNT NO. 50-1971.

Date: 10/20/03



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:	**REX D. DAVIDSON**
SERIAL NO.:	**10/027,460**
FILED:	**DECEMBER 21, 2001**
FOR:	**FLOOR SCRAPING MACHINE FOR FLOATING BLADE**
GROUP:	**3673**
EXAMINER:	**SINGH, SUNIL**
DOCKET NO.:	**006348.00002**

MAIL STOP APPEAL BRIEF – PATENTS
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' BRIEF (37 CFR 1.192)

This brief is in furtherance of the Notice of Appeal filed in this case on 8/19/03.

The fees required under §1.17(f) and any required petition for extension of time for filing this brief and fees therefore are dealt with in the accompanying Transmittal of Appeal Brief.

This brief is transmitted in triplicate.

CERTIFICATE OF MAILING UNDER 37 CFR 1.10

I hereby certify that this document and any document referred to as being attached therein is being deposited with the U.S. Postal Service in an envelope as "First Class Mail" addressed to: Mail Stop Appeal Brief – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on October 20, 2003.

Frank J. Catalano

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This brief contains these items under the following headings and in the order set below (37 CFR 1.192 (c)):

I. REAL PARTY INTEREST

II. RELATED APPEALS AND INTERFERENCES

III. STATUS OF CLAIMS

IV. STATUS OF AMENDMENTS

V. SUMMARY OF INVENTION

VI. ISSUES

VII. GROUPING OF CLAIMS

VIII. ARGUMENT

IX. APPENDIX OF CLAIMS INVOLVED IN THE APPEAL

I. REAL PARTY INTEREST

The real parties in interest in this appeal are the parties named in the caption of this Brief.

II. RELATED APPEALS AND INTERFERENCES

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal, there are no such appeals or interferences.

III. STATUS OF CLAIMS (37 CFR 1.192(c(1))

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

The claims in the application are claims 1-8.

B. STATUS OF ALL THE CLAIMS

1. Claims pending: 1-8.

2. Claims allowed: 1, 2, 3, 5, 7 and 8.

3. Claims rejected: 4 and 6.

C. CLAIMS ON APPEAL

Claims 4 and 6 are on appeal.

IV. STATUS OF AMENDMENTS

There are no outstanding amendments to the claims.

V. SUMMARY OF INVENTION (37 CFR 1.192(C (3))

A machine for scraping a floor covering (10) from a base floor surface (15) has a frame (11) with a fixed longitudinal reference axis (12). The rear of the frame (11) is supported above the floor surface (15) by left and right drive wheels (13, 14) which are oriented to propel the frame (11) across the floor surface (15) in a direction parallel to the reference axis (12). Left and right arms (16, 17) extend along left and right sides of the frame (11). The rear ends of the arms (16 and 17) are journalled for independent rotation about an axis (18). The axis (18) is transverse to the reference axis (12) and forward of the drive wheels (13, 14). A blade assembly with a floor scraping edge (30) is pivotally connected to forward ends of the arms (16, 17). The assembly independently rotates on axes (61,and 62) transverse to the reference axis (12). The scraping edge (30) extends transverse to the reference axis (12) and follows the contour of the floor surface (15). Since the rear of the frame (11) is supported by the wheels (13, 14) and the scraping edge (30) pivot is forward of the wheels (13, 14), the weight of the frame (11) and driving

force of the wheels (13 and 14) are applied by the scraping edge (30) to the floor surface (15). Since the scraping edge (30) independently rotates on the blade assembly axes (61 and 62), the edge (30) is able to follow the contour of the floor surface (15).

VI. ISSUES (37 CFR 1.192(c(4)

Whether claims 2 and 4 are anticipated under 35 USC 102(b) by Frisbee.

VII. GROUPING OF CLAIMS (37 CFR 1.192(c(5))

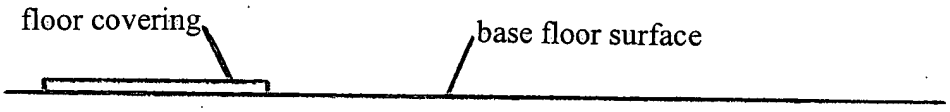
The rejected claims stand or fall together.

VIIID. ARGUMENT – REJECTION UNDER 35 USC 102

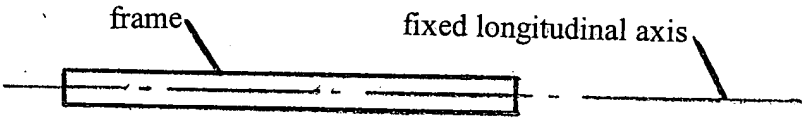
(37 CFR 1.192(c(8)(iii)

A. APPLICANTS' CLAIMED INVENTION

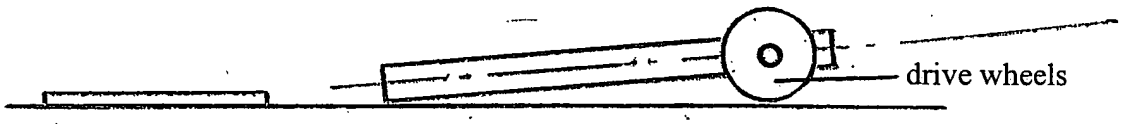
Considering the language of appellant's claim 4, the claimed invention is a machine for scraping a floor covering from a base floor surface (Ln.1-2).



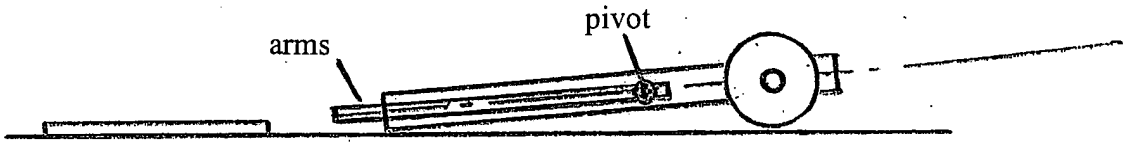
The machine has a frame with a fixed longitudinal axis (Ln.3-4)



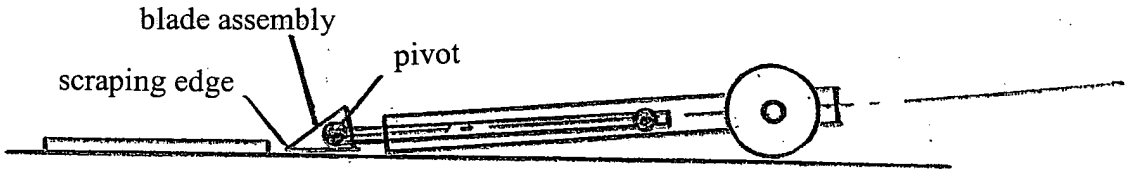
Left and right drive wheels support the rear of the frame above the floor and propel the frame across the floor (Ln.5-6).



Left and right arms extend from the sides of the frame and independently pivot on an axis forward of the drive wheel (Ln.7-10).



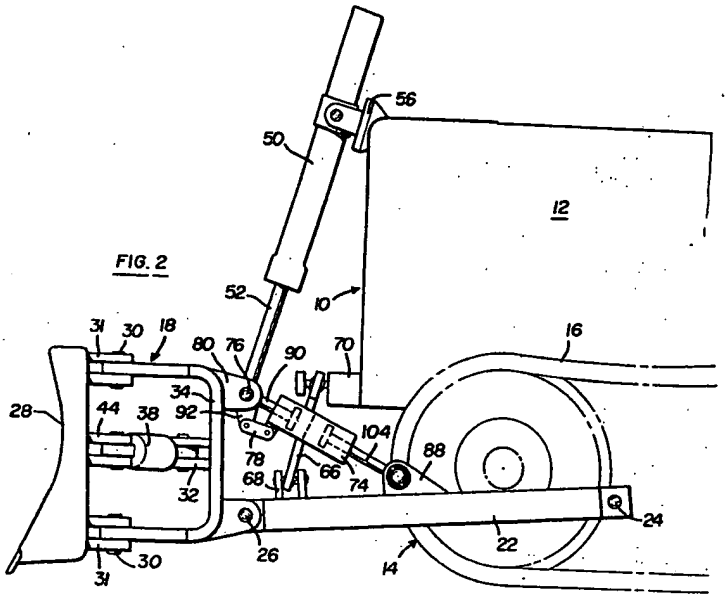
A blade assembly is pivotally connected to the forward ends of the arms with a scraping edge following the floor contour (Ln.11-14).



A wheel is a circular frame or disc that revolves about an axis. Because appellant requires wheels supporting the rear of the frame, the full weight of the machine is focused on the scraping edge.

B. THE EXAMINER'S POSITION

In the Final Office Action rejecting the Claims 4 and 6 under 35 U.S.C. § 102(b) as anticipated by Frisbee, the Examiner urges the following analysis of Frisbee:



Frisbee disclosed a machine (12) comprising a machine frame having a longitudinal reference axis which is fixed in relation to said frame, left and right drive wheels (this is considered as the wheels that supports member (16) in the rear, note a front wheel is depicted in Figure 2; however, the rear wheels are not shown and this is what the examiner is considering as the left and right rear drive wheels) supporting a rear of the frame above the floor and oriented to propel the frame across the floor in a direction parallel to said reference axis, left and right arms (20,22) journaled ((24), see Fig. 1) on said frame for independent rotation of said arms about an axis transverse to said reference axis (see col. 3 line 66) and forward of said left and right drive wheels (see Fig. 2), and a blade assembly having a floor scraping edge, said assembly being pivotally connected to said left and right arms (see Fig. 2) for independent rotation on blade assembly axes transverse to said reference axis with said scraping edge extending transverse to said reference axis. Left and right pistons and cylinders (72,74), pivotally connected at one end to the left and right arms (see Fig. 1) and pivotally connected at their other end to the blade (see Fig. 2).

C. APPELLANT'S POSITION

Appellant disagrees with the Examiner for the following reasons:

1. A 35 U.S.C. § 102 rejection for anticipation based on Frisbee is inappropriate because:

   a. Frisbee does not have drive wheels;

   b. The Examiner "considers" wheels supporting Frisbee's member 16 in the rear to be a drive wheel;

   c. The Examiner admits that the "rear wheels" which are "considered" by the Examiner to be drive wheels are not shown in Frisbee (they are not discussed in the specification either);

2. The Examiner's argument that "the rear wheels are not shown and this is what the Examiner is considering as the left and right rear drive wheels" is also flawed because it mischaracterizes appellant's claim language. Appellant's claims do not require left and right "rear" wheels. Appellant's claims require left and right "drive" wheels "supporting a rear of the frame" (Claim 4, Ln.5). There are no front and rear wheels in applicant's claimed device. There are only drive wheels which support the rear of the machine. The blade assembly arms must be pivoted "forward of said left and right drive wheels" (Claim 4, Ln.9-10). Frisbee, as the Examiner correctly notes, does not teach anything about rear wheels, drive wheels or any wheels at all. Frisbee teaches a main frame 12 flanked by drive track frames 14 which have track roller assemblies (which are not shown) engaged on the track chains 16 which, taken together, are the drive mechanism of Frisbee's device (Col.3, Ln.57-61). Frisbee, therefore, has no drive wheels as taught by appellant. Frisbee's drive mechanism is defined by the perimeter of the chain 16 and the pivot axis 24 of Frisbee's arms is not forward of Frisbee's drive mechanism, as is clearly seen in Frisbee's Figure 2 shown above.

Conversely, looking at appellant's Figure 1, it is clear that appellant's pivot point 18 is forward of appellant's left and right drive wheels as claimed.

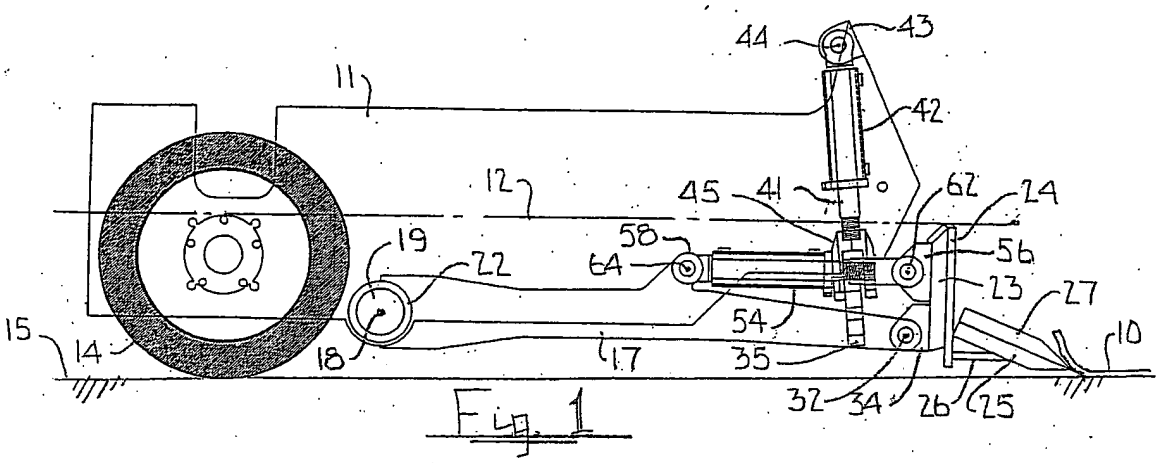


Fig. 1

This is an enormously significant structural difference. The location of the axis of rotation of the arms changes the entire balance and operational characteristics of the machine. Consider what appellant's device might be like if it were on Frisbee's tracks rather than on drive wheels supporting the rear of the machine. If the axis of the arms was rearward of the front end of the tracks (as Frisbee teaches), the tracks would be supporting the machine and the weight of the machine would not be concentrated by the scraper on the floor at the forward end so as to achieve the necessary scraping pressure. Even if the pivot axis of the arms was forward of the tracks (which Frisbee does not teach), the weight of the machine would still be supported by the front end of the tracks.

In an Advisory Action following the Final Office Action, the Examiner's position is restated as follows:

> "applicant argues that Frisbee does not teach left and right drive wheels. However, the examiner disagrees since a front wheel is depicted in Figure 2 and there are corresponding wheels in the rear that performs the functions of driving in conjunction with members 14 and 16."

This is a continuation of the Examiner's conjecture as to structure not shown or defined in Frisbee. Frisbee does not teach any "wheel" performing the drive function. Frisbee teaches that the members 14 are drive track frames and that the members 16 are drive track chains (Col.3, 57-61). The Examiner wants to take Frisbee apart and rebuild it using appellant's claims as a blueprint for the reconstruction. But, even so, the resulting machine is structurally and operationally not the machine claimed by appellant.

D. CONCLUSION

While we do not have complete information about what Frisbee's drive system is, we do have clear evidence of what it is not. Frisbee cannot be said to anticipate appellant's teachings by reliance on components that Frisbee neither shows nor describes and which clearly are not those claimed by appellant.

Therefore, applicant respectfully submits that claims 4 and 6 as written are allowable over the cited reference and reversal of rejection of claims 4 and 6 is respectfully requested.

Enclosed please find a check in the amount of $165.00 for the Appeal Brief filing fee. The Commissioner is authorized to charge Deposit Account No. 50-1971 for any fee deficiency or credit any overpayment.

Please note new contact information for the undersigned attorney. A change of address was previously filed.

IX. APPENDIX OF CLAIMS (37 C.F.R. 192 (c)(9)

The text of the claims involved in the appeal are:

4. A machine for scraping a floor covering from a base floor surface comprising:

a machine frame having a longitudinal reference axis which is fixed in relation to said frame;

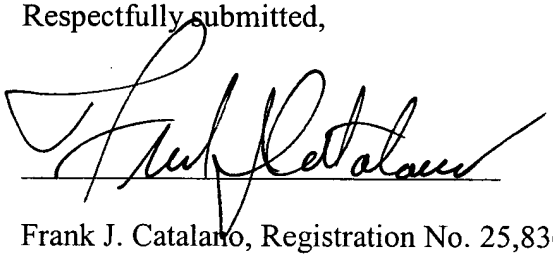
left and right drive wheels supporting a rear of said frame above the floor and oriented to propel said frame across the floor in a direction parallel to said reference axis;

left and right arms radially extending from left and right sides of said frame, rear ends of said left and right arms being journalled for independent rotation of said arms about an axis transverse to said reference axis and forward of said left and right drive wheels; and

a blade assembly having a floor scraping edge, said assembly being pivotally connected to forward ends of said left and right arms for independent rotation on blade assembly axes transverse to said reference axis with said scraping edge extending transverse to said reference axis and following a contour of the floor.

6. A machine according to claim 4 further comprising left and right pistons and cylinders for varying a pitch of said blade assembly, said pistons and cylinders being pivotally connected at rear ends thereof to midportions of said left and right arms, respectively, and being pivotally connected at forward ends thereof to said blade assembly for rotation about axes transverse to said reference axis.

Respectfully submitted,



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